IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 9440 of 2006(W)

IA.1305/2005 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

M/S. CRYSTAL DRUGS (PRIVATE)LTD.,
XXXV/1576, PALIAM ROAD, COCHIN-682 016,
REPRESENTED BY ITS DIRECTOR, SHRI BINNY C. THOMAS
CHIRAKKADAVIL HOUSE, THIRUTHY POST,
CHANGANACHERRY.

BY ADV. SRI.K.SURENDRA MOHAN
SMT.N.DHANYA

RESPONDENTS:
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1. CANARA BANK, MANJERI BRANCH,
REPRSENTED BY ITS BRANCH MANAGER.

2. LEELAMMA MATHEW, DIRECTOR,
M/S. CRYSTAL DRUGS, RESIDING AT
MUNDAMATTAM HOUSE, PAIKA, POOVARANI POST,
KOTTAYAM.

3. PHILOMINA MENDEZ, DIRECTOR,
M/S. CRYSTAL DURGS, RESIDING AT T.C.NO.27/957,
PATTOR ROAD, VANCHIYOOR, THIRUVANANTHAPURAM.

4. JACOB K. JOY, DIRECTOR,
M/S. CRYSTAL DURGS, RESIDING AT
PAINUMMOOTTIL HOUSE, RAILWAY ROAD,
THIRUVALLA-689 101.

5. VARGHESE K. JOY, DIRECTOR,
M/S. CRYSTAL DRUGS, RESIDING AT
PAINUMMOOTTIL HOUSE, RAILWAY ROAD,
THRIUVALLA-689 101.

6. MARIYAMMA JOY, W/O. LATE K.V. JOY,
DIRECTOR, M/S. CRYSTAL DRUGS, RESIDING
AT PAINUMMOOTTIL HOUSE, RAILWAY ROAD,
THIRUVALLA-689 101.

7. T.K. JOSEPH KUTTY, DIRECTOR,
M/S. CRYSTAL DRUGS, RESIDING AT
PANAKKAL HOUSE, PANAKKLAL HOSPITAL, PALAI,
KOTTAYAM-686 575.

8. JOSE PAUL, DIRECTOR, M/S. CRYSTAL DRUGS,
(MOUNT SINAI HOSPITAL, THODUPUZHA), RESIDING AT
VELLIMOOZHIYIL HOUSE, THODUPUZHA P.O., IDUKKI.

9. A.T. JOHNY AVARAN, DIRECTOR,
M/S. CRYSTAL DRUGS, RESIDING AT AVARAN HOUSE,
CHOWARA P.O., SREEMOOLANAGARAM, ERNAKULAM.

10. VINOD KRISHNAN, DIRECTOR,
M/S. CRYSTAL DRUGS, RESIDING AT
KAVITHA MENATHUMUKKU, QUILON-9.

11. LEELAMMA SUNNY, DIRECTOR,
M/S. CRYSTAL DURGS, RESIDING AT HOUSE NO.189,
WARD NO.1, MEETHANAM ROAD, EDAPPALLY TOLL,
KOCHI-24.

12. MARIAMMA THIMOTHY,
W/O. K.T. THOMOTHY, RESIDING AT KONIKKARA HOUSE
ERINJERI ANGADI, THRISSUR-1.

13. MATHEW JOSEPH, DIRECTOR,
CRYSTAL DURGS, RESIDING AT KOZHITHOTTU HOUSE,
THIDANAD P.O., ERATTUPETTA, KOTTAYAM-2.

14. LALY JOSE PANAKKEL,
DIRECTOR, M/S. CRYSTAL DRUGS, RESIDING AT
PANACKAL HOUSE, PALAI-686 575.

15. M.M. MATHEW, PAIKA, POOVARANY P.O.,
KOTTAYAM.

16. HENRY MENDEZ, T.C.NO.27/957,
PATTOR ROAD, WANCHIYOOR, THIRUVANANTHAPURAM.

17. K.M. SUNNY, S/O. MATHEW,
HOUSE NO.189, WARD NO.1,
METHANAM ROAD, EDAPPALLY TOLL, KOCHI-24.

18. DEEPA RAVISANKAR, KAVITHA,
MEENATHUMUKKU, QUILON-9.

19. GRACY JOY, D/O.LATE K.V.JOY,
PAINUMMOOTTIL HOUSE, WEST RAILWAY STATION,
THIRUVALLA.

20. ANNIE VARGHESE, D/O. LATE K.V. JOY,
KAINAKKATTIL HOUSE, PUTHUPALLY, KOTTAYAM.

21. LAILA JOY, D/O. LATE K.V. JOY,
PAINUMMOOTTIL HOUSE, WEST RAILWAY STATION,
THIRUVALLA.

22. VARGHESE K. JOY, S/O. LATE K.V. JOY,
HOUSE NO.49, K.V. COLONY,
PANAMPILLY NAGAR, ERNAKULAM.

23. SHEEMA, D/O. K.T. THIMOTHY,
KONIKARA HOUSE, WEST SURYA GRAMAM,
BEHIND BISOP HOUSE,, KIZHAKKUMPATTUKARA ROAD,
THRISSUR-5.

24. R. RADHAKRISHNAN, PADMA BHAVAN,
CHITTOOR ROAD, KOTTAKKAKOM WARD, KOLLAM.

25. AJAY RADHAKRISHNAN, PADMA BHAVAN,
CHITTOOR ROAD, KOTTSAKKAKOM WARD, KOLLAM.

26. CHAITANYA RADHAKRISHNAN,
D/O GEETHA RADHAKRISHNAN,
PADMA BHAVAN, CHITTOOR ROAD,
KOTTAKKAKOM WARD, KOLLAM.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- PHOTOSTAT TRUE COPY OF JOINT COMPROMISE PETITION

EXT.P2- PHOTOSTAT TRUE COPY OF FINAL ORDER DATED 1.4.05 OF THE DEBTS RECOVERY TRIBUNAL, EKM.

EXT.P3- PHOTOSTAT TRUE COPY OF PETITION I.A.1305/05 FILED BY THE PETITIONER BEFORE THE DEBTS RECOVERY TRIBUNAL, EKM.

EXT.P4- PHOTOSTAT TRUE COPY OF ORDER DATED 12.8.05 OF THE DEBTS RECOVERY TRIBUNAL, EKM.

(TRUE COPY)

P.A TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J

W.P.(C). 9440/2006

Dated this the 26th day of October, 2007

JUDGMENT

The first respondent filed a suit against the writ petitioner for recovery of money. The petitioner filed a written statement raising counter claim with an application to sue as an indigent person in relation to the counter claim. Pending that suit, the Recovery of Debts Due to Banks and Financial Institution Act, 1993, hereinafter referred to as 'the Act', came into force. As a consequence, the suit was transferred to the Debt Recovery Tribunal, which proceeded with the matter. With the passage of time, Section 19 of the Act stood amended with effect from 17.1.2000 authorizing the Tribunal to entertain counter claims. Thus, the Tribunal got the power to adjudicate on counter claims. But, that would not invite any liability to pay the court-fee in relation to the counter claim before the Tribunal. This issue is covered by the decision of this Court in **Dataware Design Labs (P) Ltd. v. State Bank of India (2005 (2) KLT 96)**. Parties had also settled the matter out of Court and entire loans have been discharged.

Under the above circumstances, this writ petition is allowed quashing the directions in Ext.P4 to remit an amount of Rs.65,000/-. It is hence directed that the amount of Rs.65,000/- paid by the petitioner in obedience to the order in T.A.1105/1997 shall be refunded to the petitioner, by the Tribunal, within a period of one month from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN
Judge

mrcs